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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,602	03/24/2004	James S. Whitaker	2802-107-025	3678

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EXAMINER

LOPEZ, FRANK D

ART UNIT	PAPER NUMBER
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3745

DATE MAILED: 09/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

TWJn

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/807,602	WHITAKER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	F. Daniel Lopez	3745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/24/04</u> . | 6) <input type="checkbox"/> Other: ____.  |

***Claim Rejections - 35 USC § 112***

Claims 2-7 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 2 line 12-13 "said variable displacement pump" should be "said main pump", to agree with line 3.

Claim 3 does not appear to further limit claim 2, since the pump appears to be claimed as a variable displacement pump, in claim 2 line 12-13.

Claims not specifically mentioned are indefinite, since they depend from one of the above claims.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 2-4, 8, 9, 11, 12 and 14 are rejected under 35 U.S.C. § 102(b) as being anticipated by Fuhrmann (see discussion below).

Claims 2, 3, 5, 7, 8, 9 and 14 are rejected under 35 U.S.C. § 102(b) as being anticipated by Cochran et al (see discussion below).

Claim 7 is rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103 as obvious over Fuhrmann. Fuhrmann discloses a hydraulic system comprising a hydraulic circuit having first and second lines (2, 3, respectively) connecting first and second ports of a variable displacement pump (1), respectively, with first and second ports of a motor (4), respectively; a charge pump (7) connected to the circuit and a reservoir (15); and a hot oil shuttle valve of known design (11, column 2 line 1-2) integrated into the pump (as shown by dash and dotted line around the pump and shuttle valve), for diverting a portion of the fluid flowing through the circuit to the reservoir; but does not say that the hot oil shuttle valve is a spool valve.

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Hot oil shuttle valve of known design include spool type valves (see e.g. Weisenbach). Therefore, inherently, the hot oil shuttle valve of known design includes a spool type valve housed in a bore. If not, it would have been obvious at the time the invention was made to one having ordinary skill in the art to make the hot oil shuttle valve of Fuhrmann a spool type valve in a bore, as a matter of engineering expediency.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 1 and 10 are rejected under 35 U.S.C. § 103 as being unpatentable over Fuhrmann in view of Cochran et al. Fuhrmann discloses all the elements of claims 1 and 10, as discussed in the above rejection, and further includes first (e.g. 12), second (e.g. 13) and third (14) passages connected to first and second lines, and the reservoir, respectively; but does not disclose that the third passage is connected to a case drain line connecting the pump to the reservoir.

Cochran et al teaches, for a hydraulic system comprising a hydraulic circuit having first and second lines connecting first and second ports of a variable displacement pump (e.g. 18), respectively, with first and second ports of a motor (e.g. 24), respectively; a charge pump (12) connected to the circuit and a reservoir (20); and a hot oil valve (34) integrated into the pump (column 4 line 6-9), for diverting a portion of the fluid flowing through the circuit to the reservoir, through a third passage; that the third passage is connected to a case drain line (65) connecting the pump to the reservoir.

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Since the third lines of Fuhrmann and Cochran et al are functionally equivalent in the piston art; it would have been obvious at the time the invention was made to one having ordinary skill in the art to connect the third passage of Fuhrmann to a case drain line connecting the pump to the reservoir, as taught by Cochran et al, as a matter of engineering expediency.

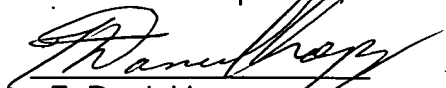
Claims 6 and 13 are rejected under 35 U.S.C. § 103 as being unpatentable over Fuhrmann in view of Cochran et al. Fuhrmann discloses all the elements of claims 6 and 13, as discussed in the above rejection; but does not disclose that the motor is a two speed motor.

Official notice is taken that it is well known, for a hydraulic system comprising a hydraulic circuit having first and second lines connecting first and second ports of a variable displacement pump, respectively, with first and second ports of a motor, that the motor can be either a fixed displacement motor or a two speed motor. It would have been obvious at the time the invention was made to one having ordinary skill in the art to make the motor of Fuhrmann a two speed motor, as a matter of engineering expediency.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dan Lopez whose telephone number is 571- 272-4821. The examiner can normally be reached on Monday-Thursday from 6:15 AM -3:45PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ed Look, can be reached on 571-272-4820. The fax number for this group is 571-273-8300. Any inquiry of a general nature should be directed to the Help Desk, whose telephone number is 1-800-PTO-9199.



F. Daniel Lopez  
Primary Examiner  
Art Unit 3745

September 2, 2005